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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 MICHAEL J. AGUIRRE,

12 Plaintiff,

13 v.

14 UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
15 DOES 1 to 10, inclusive,

16 Defendants.  
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Case No. '19CV0587 H KSC

**COMPLAINT FOR  
DECLARATORY JUDGMENT;  
PRODUCTION OF FREEDOM OF  
INFORMATION (FOIA) RECORDS**

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

Plaintiff MICHAEL J. AGUIRRE, for his complaint against Defendant UNITED STATES NUCLEAR REGULATORY COMMISSION (NRC), alleges as follows:

1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to compel production under his FOIA requests to the NRC.

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B).

3. The NRC is a federal agency charged with the duty to continuously inspect nuclear power plants and enforce safety regulations to ensure people and the environment are adequately protected from uses of radioactive material. As a federal agency, the NRC is also charged with the duty to comply with the record production laws under FOIA.

4. One nuclear site the NRC is charged with overseeing is a site that stores 3.6 million pounds of nuclear waste on a beach in San Diego, California. From January 2018 to August 2018, the NRC observed and identified a pattern of on-going safety violations during the site's process for storing nuclear waste. In January 2018, the NRC first observed these safety violations when it identified the practice canisters loaded at the San Diego nuclear site were smaller than the ones the utility was going to actually use. This also meant the utility's staff was not adequately trained on *actual* nuclear loading conditions. The NRC was also aware that the first canisters downloaded were not properly supported by the pins (shims) designed to hold the canisters in place.

5. In July 2018, the NRC was aware another canister at the site took more than six times longer than normal to download, and still no action was taken. A month later on 3 August 2018, there was another incident during which the utility's staff misaligned a canister storing approximately 100,000 pounds of nuclear waste.

1 This meant the downloaded canister was unsupported and could have dropped up to  
2 eighteen feet. Despite this serious and potentially dangerous incident, the NRC  
3 permitted the utility to delay the formal reporting of the incident.

4 6. There was a Community Engagement Panel (CEP) scheduled for 9  
5 August 2018, at which the utility should have informed the public of the  
6 misalignment incident. Three days earlier, on 6 August 2018, the NRC and utility  
7 informally agreed to stop downloading nuclear waste because of the seriousness of  
8 the incident. However, at the CEP meeting, the utility did not say anything about  
9 the misalignment that occurred and the resulting reason to stop loading. Instead, the  
10 utility represented to the public the utility stopped loading to allow its crew to  
11 “rest,” which, according to the utility, it “periodically” does. The NRC knew this  
12 was false but did not make any comment.

13 7. Later in the meeting during public comment, it was a worker who  
14 brought up the August 3rd misalignment incident. The utility official stated it was  
15 not reported because: “There was no risk to spent fuel, no risk to the public.”  
16 Again, NRC officials knew this was false and allowed the utility to make these  
17 misrepresentations to the public. The NRC then assisted in the utility’s cover-up by  
18 allowing the utility to not formally report the incident until approximately six  
19 weeks later.

20 8. The NRC’s repeated failure to address the utility’s clear pattern of  
21 safety violations shows the NRC, the purported independent federal agency charged  
22 with enforcing safety regulations and informing the public, has been captured by  
23 the utility it is supposed to regulate.

24 9. Since the August 3rd incident, NRC officials have not appeared before  
25 the public in San Diego in an NRC proceeding, and have only attended meetings  
26 controlled by the utility operating the San Diego nuclear site. The only proceedings  
27 the NRC conducted on these issues was in Arlington, Texas, and another online  
28 webinar with the physical meeting again in Arlington, Texas—over 1,000 miles

1 away from the San Diego nuclear site. The NRC has not held any evidentiary  
2 hearing on this matter and has not placed any witness or decision-maker under oath.

3 10. On or about 11 March 2019, the NRC announced it would host an  
4 online webinar scheduled for 25 March 2019 for anyone interested in the 3 August  
5 2018 misalignment incident and the NRC's alleged enforcement decisions related  
6 to safety violations occurring at that San Diego nuclear site. Upon receiving notice  
7 of the webinar the following, on 19 March 2019, Plaintiff requested all records of  
8 communication between any agent, officer or employee of the NRC and any agent,  
9 officer, or employee of the utility operating the San Diego nuclear site from 29  
10 November 2018 to present regarding the subject matter of NRC's March 25th  
11 webinar: the NRC's enforcement decisions at the San Diego nuclear site. Plaintiff  
12 requested expedited processing because of the urgency created by the NRC's short  
13 two-week notice of the webinar; to meaningfully participate in the webinar and  
14 adequately address the on-going safety violations occurring at the site, Plaintiff  
15 (and the public) needed the records *prior* to the March 25th webinar.

16 11. Defendant denied Plaintiff's request based on the pretext that there  
17 was no "imminent threat" to life or safety of others, and Plaintiff was not a person  
18 who "primarily engaged in the dissemination of information to the public." The  
19 NRC stated to prove he was a person who primarily engaged in the dissemination  
20 of information, Plaintiff was required to show a list of written and published  
21 articles. That same day, Plaintiff e-mailed the federal agency with four publications  
22 Plaintiff has either written or participated in regarding disseminating information to  
23 the public about utilities and the agencies charged with regulating utilities. Plaintiff  
24 also explained he had written many other articles that could be provided if  
25 necessary.

26 12. In response, the NRC did not address Plaintiff's contention about his  
27 written articles, and instead summarily stated it would log his response as an appeal  
28 for expedited processing, but there was no way to provide the records to the public

1 in time for the March 25th webinar. NRC did not provide any records prior to its  
2 short-set March 25 webinar. To date, the NRC has failed to produce any responsive  
3 records.

4 13. As expected, the March 25th webinar was a mere guise for the NRC to  
5 praise the changes the utility has made at the nuclear waste site, instead of  
6 addressing why the safety violations occurred in the first place or why the NRC  
7 failed to address the pattern of violations occurring at the site. Neither NRC official  
8 who spoke at the meeting was a part of the original team of NRC officials who  
9 observed the misalignment incident that occurred at the San Diego nuclear site.

10 14. Plaintiff requested the NRC hold the March 25th webinar physically in  
11 San Diego, California, because the stated intent of the entire webinar was to inform  
12 the public and allow the public to participate and provide feedback to the NRC.  
13 Plaintiff explained to the NRC the online format is inherently limited and does not  
14 allow for the public to adequately participate. The NRC denied Plaintiff's request  
15 because it believed NRC officials would be attending the next CEP meeting in  
16 Laguna Hills, California on 28 March 2019.

17 15. Although the NRC stated it would be represented at the March 28th  
18 CEP meeting, the duties of the NRC are not to act as mere participants, but rather as  
19 *regulators* that hold independent meetings to inform the public of the NRC's  
20 enforcement actions to ensure the storage of nuclear waste is done transparently and  
21 safely. The NRC has only exposed itself to the public of San Diego through  
22 vehicles created by the utility it is supposed to regulate: the Community  
23 Engagement Panel. The NRC has acted as an appendage to the utility it is charged  
24 with regulating. This collusive behavior, coupled with its evasive tactics to avoid  
25 producing the requested records, shows the NRC has no intention of producing the  
26 records.

27 16. The records Plaintiff requested will show the extent to which the NRC  
28 has colluded with the utility to prevent the disclosure of on-going safety violations.

1 However, the NRC continues to evade the public and has failed to produce any  
 2 records to show the agency took the necessary steps to enforce safety regulations at  
 3 the San Diego nuclear site. Any exhaustion of administrative remedies is futile  
 4 because the NRC has demonstrated no intention to produce the records of  
 5 communication between the NRC and the utility it purports to regulate. The NRC  
 6 continues to prevent the public from having access to this critical data. Now,  
 7 Defendant wishes to evade Plaintiff's FOIA request to produce the records that will  
 8 prove the NRC has been regulatory captured.

9 17. The NRC's stonewall tactics are inapposite to FOIA's policy of broad  
 10 disclosure of government documents and maximum feasible public access to  
 11 government information. *Church of Scientology v. United States Dep't of the Army*,  
 12 611 F.2d 738, 741–42 (9th Cir. 1979). Moreover, the NRC's evasive and collusive  
 13 behavior shows the NRC has no intention of releasing the records Plaintiff  
 14 requested, and any exhaustion of administrative remedies would be futile.

15 18. The United States Supreme Court has recognized FOIA is designed to  
 16 "pierce the veil of administrative secrecy and to open agency action to the light of  
 17 public scrutiny." *Dep't of the Air Force v. Rose*, 425 U.S. 352, 361 (1976). Plaintiff  
 18 requested these records to pierce the NRC's veil of secrecy and to inform the public  
 19 of the NRC's actions or inaction in fulfilling its duties to ensure the storing of  
 20 nuclear waste in San Diego is safe and transparent. Plaintiff has a right of access to  
 21 the requested information under 5 U.S.C. § 552(a)(3), and the documents Plaintiff  
 22 requested should be immediately released.

### 23 JURISDICTION AND VENUE

24 19. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 because this  
 25 action arises under the laws of the United States, in particular, 5 U.S.C. § 552. This  
 26 Court also enjoys jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B), under which,  
 27 "the district court of the United States in the district in which the complainant  
 28 resides, or has his principal place of business... has jurisdiction to enjoin the



1 agency from withholding agency records and to order the production of any agency  
2 records improperly withheld from the complainant” because, among other things,  
3 Plaintiff lives in this District.

4 20. Venue is proper in this District pursuant to 5 U.S.C. § 552(a)(4)(B)  
5 and 28 U.S.C. § 1931 because, among other things, Plaintiff’s principal place of  
6 business is in this District.

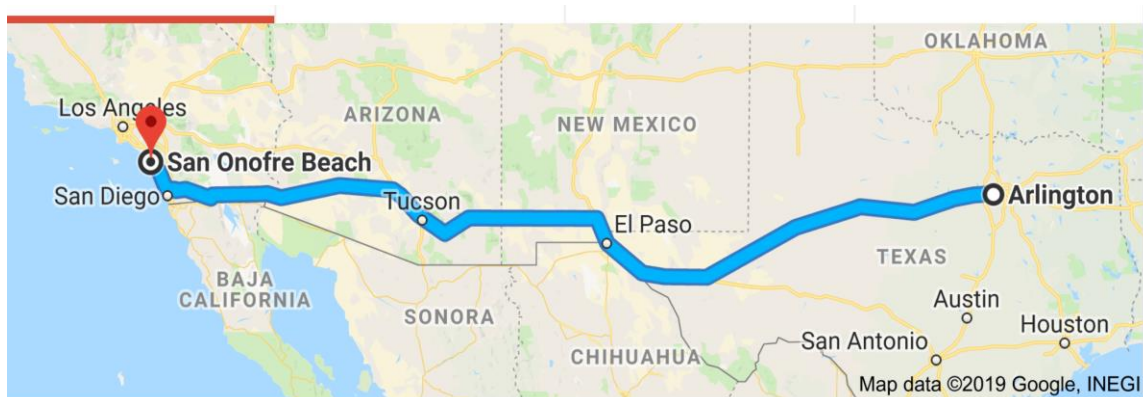
## 7 **PARTIES**

8 21. Plaintiff MICHAEL AGUIRRE is a resident of this District and is an  
9 attorney at the law firm AGUIRRE & SEVERSON, which is his principal place of  
10 business at 501 West Broadway, Suite 1050, San Diego, California 92101. Plaintiff  
11 brings this action in his personal capacity as a certified fraud examiner and former  
12 elected official with a strong personal interest in open government that operates  
13 transparently as to its conduct and records.

14 22. Defendant United States Nuclear Regulatory Commission (NRC) has  
15 the records Plaintiff requested.

## 16 **FACTS**

17 23. From its regional office in Arlington, Texas, the NRC regulates the  
18 ways and means of three million, eight-hundred thousand (3,800,000) pounds of  
19 nuclear waste that is stored on the beach in San Diego.



27 24. In September 2014, the NRC received several pertinent documents  
28 related to the operations of the San Diego nuclear waste site including, an Irradiated



1 Fuel Management Plan; Site Specific Decommissioning Cost Estimate; and Post-  
2 Shutdown Decommissioning Activities Report.

3 **A. The Irradiated Fuel Management Plan**

4 25. The Irradiated Fuel Management Plan (IFMP) assumed title and  
5 possession of the spent fuel at the San Diego nuclear waste site will be transferred  
6 to the United States Secretary of Energy for its ultimate disposal in a repository.  
7 The IFMP provided for the “initial interim storage” to be “wet storage” in spent  
8 fuel pools at the San Diego nuclear site. The spent fuel pools were to be isolated  
9 from their normal support systems and those systems replaced by stand-alone  
10 cooling and filtration units (also termed a “spent fuel pool island”). Next, under the  
11 IFMP, the irradiated fuel in the spent fuel pools was to be transferred to interim  
12 “dry storage” at the Common Independent Spent Fuel Storage Installation (ISFSI)  
13 also located at the nuclear site in San Diego.

14 26. The IFMP noted there were a total of 3,460 irradiated fuel assemblies  
15 at the San Diego nuclear waste site. Seven-hundred ninety-two (792) fuel  
16 assemblies had already been transferred to dry storage, and the remaining 2,668  
17 irradiated fuel assemblies were to be loaded into dry storage canisters and  
18 transferred to the ISFSI. The IFMP noted there were 18 canisters storing Unit 1  
19 nuclear waste and 33 canisters storing other spent fuel. The IFMP stated the  
20 movement of the irradiated fuel to dry storage would begin in 2017 and would  
21 finish in 2019.

22 27. The IFMP also indicated it would procure additional canisters  
23 beginning in 2014, including an additional 47 canisters for Unit 2 at the San Diego  
24 nuclear site, and 44 canisters for Unit 3 of the site. The spent fuel pool inventory  
25 was forecasted to be transferred to dry storage no later than the end of 2019. The  
26 IFMP assumed a 2024 start for the transfer of spent fuel from the site in San Diego  
27 to the Department of Energy. The utility operating the San Diego nuclear site  
28 assumed all spent fuel would be removed from the San Diego site as of 2049. Based

1 on this assumption, the utility assumed the spent fuel storage facility in San Diego  
2 would be decommissioned by 2051.

3 28. The IFMP provided the cost for 12 additional canisters to be stored at  
4 the San Diego nuclear site. It also provided for ongoing storage of Unit 1 spent fuel  
5 at the GE-Hitachi Nuclear America LLC's Morris Operation in Morris, Illinois. The  
6 utility also represented, in the IFMP, it was committed to providing consistent and  
7 up-to-date information to all of its stakeholders and regulators.

8 29. In the IFMP, the utility operating the San Diego nuclear waste site  
9 admitted to the NRC the utility had collected funds from ratepayers in the nuclear  
10 decommission trusts for funding Spent Fuel Management.

#### 11 **B. Post-Shutdown Decommissioning Activities Report**

12 30. The NRC also received the Post-Shutdown Decommissioning  
13 Activities Report (PSDAR) in September 2014. In the PSDAR, the utility  
14 acknowledged it has the responsibility to restore the San Diego site in accordance  
15 with applicable regulations and agreements. The utility also recounted, Unit 1 of the  
16 San Diego nuclear site was shut down in 1992 with on-shore facilities largely  
17 dismantled by 2009.

18 31. In the report, the utility admitted it had a responsibility to its  
19 stakeholders and the communities they serve to decommission the San Diego  
20 nuclear site in a transparent and effective manner while striving to attain high  
21 standards of safety and environmental protection.

22 32. The utility acknowledged the importance of community engagement  
23 during the decommissioning process. The utility stressed its commitment to  
24 engaging the local community and its leaders in an open, transparent, and proactive  
25 manner. The utility represented it was actively engaged with external stakeholders  
26 to: understand their priorities; inform them of the utility's plans for the San Diego  
27 nuclear site, and to seek the community's input on the safe, timely, and cost-  
28 effective decommissioning of the nuclear site. The utility claimed in the PSDAR it

1 was actively engaging with the community through public outreach including  
2 briefings for community groups and routine educational updates for local, state, and  
3 federal officials.

4 33. The utility reported it had formed the Community Engagement Panel  
5 (CEP) and claimed it had members representing a broad range of stakeholder to  
6 advise the utility on decommissioning matters. The utility represented CEP  
7 members were provided with the opportunity to review and provide input on the  
8 PSDAR, the IFMP (described above) and the Decommissioning Cost Estimate  
9 (described below). The utility represented it hosted two workshops with external  
10 technical experts to provide the CEP members with a depth of knowledge in these  
11 areas to assist CEP members' review of the PSDAR, DCE, and IFMP. The utility  
12 also stated it received feedback from the CEP prior to finalization of those  
13 documents.

14 34. In the PSDAR, the utility noted the nuclear site was located on the  
15 coast of southern California in San Diego County, approximately 62 miles  
16 southeast of Los Angeles and 51 miles northwest of San Diego. The San Diego  
17 nuclear site is located entirely within the boundaries of the United States Marine  
18 Corps Base Camp Pendleton. The site is approximately 4,500 feet long and 800 feet  
19 wide, comprising 84 acres. The site area is known as "the Mesa" for other adjacent  
20 parcels. The property on which the station is built is subject to an easement from  
21 the U. S. Government through the U. S. Navy. The nearest privately-owned land is  
22 approximately 2.5 miles from the site.

23 35. The PSDAR provides the storage at the San Diego nuclear site was  
24 initiated in 2003 and was subsequently expanded in 2007 to support the currently  
25 placed 63 Horizontal Storage Modules in which 51 dry storage canisters have been  
26 installed to-date: 50 containing irradiated fuel and one (1) containing Greater-Than-  
27  
28

1 Class-C (GTCC) materials.<sup>1</sup> The most recent loading campaign was conducted in  
 2 2012. The PSDAR noted the NRC has evaluated the environmental impacts of three  
 3 general methods for decommissioning power reactor facilities in NUREG-0586,  
 4 “Final Generic Environmental Impact Statement (GELS) on Decommissioning  
 5 Nuclear Facilities,” Supplement 1. The three general methods are:

6 DECON: The equipment, structures, and portions of the facility and  
 7 site that contain radioactive contaminants are promptly removed or  
 8 decontaminated to a level that permits termination of the license after  
 cessation of operations.

9 SAFSTOR: The facility is placed in a safe stable condition and  
 10 maintained in that state (safe storage) until it is subsequently  
 11 decontaminated and dismantled to levels that permit license  
 12 termination. During SAFSTOR, a facility is left intact or may be  
 13 partially dismantled, but the fuel has been removed from the reactor  
 vessel and radioactive liquids have been drained from systems and  
 components and then processed. Radioactive decay occurs during the  
 SAFSTOR period, thus reducing the levels of radioactivity in and on  
 the material and potentially the quantity of radioactive material that  
 must be disposed of during the decontamination and dismantlement.

14 ENTOMB: Radioactive structures, systems, and components are  
 15 encased in a structurally long-lived substance such as concrete. The  
 16 entombed structure is appropriately maintained, and continued  
 surveillance is carried out until the radioactivity decays to a level that  
 permits termination of the license.

17 36. The utility operating the San Diego nuclear site reported it chose the  
 18 DECON method. According to the PSDAR, the utility claimed it is currently in the  
 19 planning period during which the site is preparing for safe and orderly transition to  
 20 dismantlement. The utility reported additional ISFSI capacity would be added to  
 21 meet all of the site’s needs and plans to isolate the Spent Fuel Pools (referred to as  
 22 “islanding”) were in development. The utility also reported the San Diego nuclear  
 23 site would be decontaminated and dismantled to levels that permit termination of  
 24 the NRC licenses and in accordance with the requirements agreed to by the U.S.  
 25 Navy in the easement for the site. The utility stated it was developing a Termination

26 <sup>1</sup> According to the NRC’s website, the NRC has developed a classification system which  
 27 categorizes waste as Class A, B, C, or Greater-Than-Class C (GTCC). GTCC has concentrations  
 28 of radionuclides that exceed the limits established by the Commission for Class C LLRW. See  
<https://www.nrc.gov/waste/llw-disposal/llw-pa/gtcc-transuranic-waste-disposal.html>.

1 Plan to be submitted for NRC approval *at least* two years prior to termination of the  
2 license.

3 37. In the PSDAR, the utility claimed it had benchmarked the experiences  
4 of commercial decommissioning projects in the 1990s and 2000s and has sought the  
5 input from experienced individuals and groups with a wide range of such  
6 experience. The utility represented it maintains close communications with those  
7 facilities currently undergoing decommissioning and with many of the  
8 organizations supporting those efforts.

9 38. The utility specifically cited the Zion and Humboldt Bay plants as  
10 undergoing active decommissioning. The utility stated three other plants  
11 (Kewaunee, Crystal River 3, and Vermont Yankee) were or would soon be entering  
12 SAFSTOR conditions of varying durations prior to dismantlement. In the PSDAR,  
13 the utility also stated there were mature solutions for many of the technical  
14 challenges confronting the San Diego nuclear site's decommissioning.

15 39. The NRC received this information as early as September 2014, and  
16 the NRC is the organization in charge of ensuring the utility decommissioned the  
17 San Diego nuclear site in accordance with the relevant regulations and agreements.

### 18 **C. Decommissioning Cost-Analysis**

19 40. The NRC also received a Decommissioning Cost Analysis (DCA) for  
20 the San Diego nuclear waste site reporting waste management costs were a  
21 significant portion of the decommissioning cost estimate. According to the utility,  
22 the following did or would take place. It hired a third-party contractor, Energy  
23 Solutions, to estimate the spent fuel waste disposal costs for the San Diego site. The  
24 utility claimed regulations governing disposal of radioactive waste are stringent to  
25 ensure control of the waste and preclude adverse impact on public health and  
26 safety. The utility put the largest spent fuel staffs in place while the fuel pool is  
27 operational during the spent fuel cooling period and the fuel assemblies are being  
28 transferred to dry storage. After all spent fuel has been removed from the spent fuel

pool, the utility will reduce the amount of staff at the site. During spent fuel pool operations and the dry storage period, the full-time spent fuel management staff will be supplemented with part-time staff to support fuel movements.

41. According to the utility operating the San Diego nuclear waste site, the spent fuel shipping schedules are based in part on the Department of Energy's "Acceptance Priority Ranking & Annual Capacity Report," dated July 2004. The information regarding existing fuel inventory, planned transfers to dry storage and the Department of Energy's projected date of 2024 for acceptance of spent fuel from the San Diego nuclear waste site is based on information provided by the utility. The utility also stated a spent fuel shipping schedule is provided as part of its decommissioning cost estimate (see table below). The utility estimated the total spent fuel portion of the decommissioning cost would be \$1,276,196,000.

Account Total					19.52	\$1,034,230	\$1,078,016	\$2,112,246
Spent Fuel (50.54(bb)) and (72.30)								
SNF Pd 1	Spent Fuel Management Transition	6/7/2013	12/31/2013	0.56	\$63,891	\$66,105	\$129,997	
SNF Pd 2	Spent Fuel Transfer to Dry Storage	1/1/2014	6/1/2019	5.41	\$344,629	\$372,193	\$716,822	
SNF Pd 3	Dry Storage During Decommissioning - Units 1, 2 and 3	6/1/2019	12/5/2031	12.51	\$61,425	\$61,425	\$122,849	
SNF Pd 4	Dry Storage Only - Units 1, 2 and 3	12/5/2031	12/31/2035	4.07	\$29,383	\$29,383	\$58,765	
SNF Pd 5	Dry Storage Only - Units 2 and 3	12/31/2035	12/31/2049	14.00	\$107,326	\$107,326	\$214,653	
SNF D&D Pd 1	ISFSI License Termination	12/31/2049	5/6/2050	0.34	\$1,260	\$1,260	\$2,520	
SNF D&D Pd 2	ISFSI Demolition	5/6/2050	9/8/2051	1.34	\$15,295	\$15,295	\$30,590	
Account Total					38.23	\$623,209	\$652,987	\$1,276,196

#### **D. NRC Observes On-Going Safety Violations at the San Diego Nuclear Waste Site**

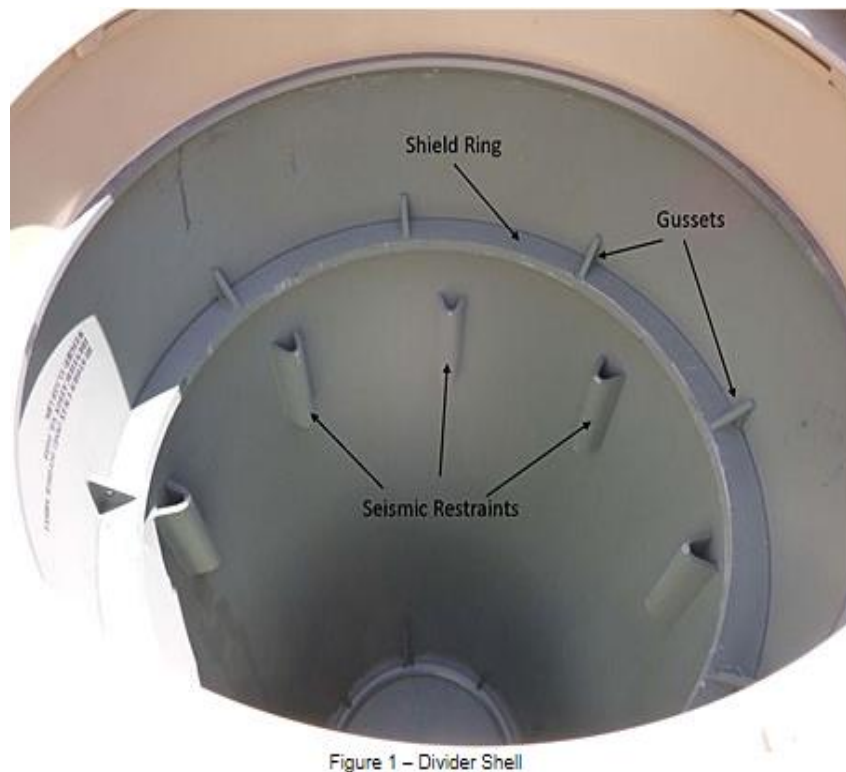
42. From 22 January 2018 to 31 January 2018, NRC inspectors observed the utility's first nuclear waste Canister Loading Operation on the beach in San Diego. The first nuclear waste canister loaded did not have an NRC-approved shim system to allow airflow to the fuel assemblies within the canister, a violation of NRC safety rules, including 10 CFR 72.146(a). In fact, the first four nuclear waste canisters did not have shims with cutouts needed for thermal heat transfer helium



1 flow.

2 43. During downloading of the nuclear canisters from January to August  
3 2018, the bottoms of canisters were frequently getting caught on the shield ring  
4 located inside the storage vaults. As of August 2018, 29 canisters, each containing  
5 37 nuclear fuel assemblies and each weighing 100,000 pounds, were downloaded.

6 44. On 3 August 2018, a nuclear waste canister during downloading came  
7 to rest on a shield ring inside the storage vault, as shown here:



21 45. The slings used to lower the canister were completely bunched up on  
22 the ground—supporting no part of the canister load. If that multi-purpose canister  
23 (MPC) had slipped, or the canister had slipped somehow because of vibration, or  
24 some other mechanism during that time, those slings, in the completely slack and  
25 bunched-up position, were in no condition to capture and arrest that drop. That  
26 MPC, containing 100,000 pounds of spent fuel, would have dropped to the bottom  
27 of that canister with no slings being enabled.

28 ///



46. On 22 July 2018, there was an abnormal delay in a canister downloading operation. What should have taken 15 minutes to download a canister, ended up taking an hour and a half (90 minutes) because the nuclear waste canister was not properly aligned for downloading for over an hour and a half. This event was not recorded as part of the required corrective action program. There was no communication, no operational experience passed on to make sure workers learned from what happened on 22 July 2018.

47. During downloading operations (January 2018 to August 2018) the nuclear waste station frequently experienced the bottoms of canisters getting caught on the shield ring. Those responsible and in charge never identified the misalignments as conditions adverse to quality, consequently, those responsible and in charge never implemented actions that would have prevented the August 3rd event.

48. Additionally, during downloading operations (January 2018 to August 2018) there were numerous deficiencies in training and supervision of the downloading of nuclear waste at the San Diego beach site. There were also numerous instances of failures to make required notifications of safety rule violations.

49. Management of the nuclear waste at the San Diego beach site was outsourced to Holtec International (Holtec), a corporation organized under the laws of the state of Delaware, with its principal place of business at 555 Lincoln Drive West, Marlton, New Jersey—2,804 miles from the San Diego beach nuclear waste site, as shown here:



50. Holtec, in turn, delegated management of the nuclear waste at the San Diego beach site to Williams Industrial Services Group (Williams) and Sonic Systems International (Sonic). Williams surrendered its right to do intrastate business in California on 1 December 2005. Sonic is a privately-owned corporation.

51. Williams' principal place of business is Chamblee, Georgia—2,203 miles from the San Diego nuclear waste beach site, as shown here:



52. Sonic's principal place of business is Houston, Texas—1,516 miles from the San Diego nuclear waste beach site as shown here:



53. NRC conducted several Special Inspection Reports at the San Diego nuclear waste site, including the 3 August 2019, the day of the misalignment incident. However, NRC officials have not appeared before the public in San Diego in an NRC proceeding. The only proceeding the NRC conducted was at Arlington, Texas. The NRC has not held any evidentiary hearing on this matter. It has not placed any witness or decision maker under oath. The NRC officials have delayed disclosure of violations of NRC safety rules related to the ways and means in which the nuclear waste at the San Diego beach site was managed.

1           54. There was a Community Engagement Panel (CEP) scheduled for 9  
2 August 2018, where the utility should have informed the public of the incident.  
3 Three days earlier, on 6 August 2018, the NRC and utility informally agreed to stop  
4 downloading nuclear waste because of the seriousness of the incident. However, at  
5 the CEP meeting, the utility did not say anything about the misalignment that  
6 occurred. Instead, the utility represented to the public the utility was allowing it  
7 crew to “rest,” which the utility periodically does. The NRC knew this was false,  
8 but did not make any comment. Later in the meeting during public comment, it was  
9 a worker who brought up the August 3rd event. The utility official stated it was not  
10 reported because: “There was no risk to spent fuel, no risk to the public.” Again,  
11 NRC officials knew this was false and allowed the utility to make these  
12 misrepresentations to the public.

13           55. The March 25th webinar hosted by the NRC regarding the  
14 enforcement decision at the San Diego nuclear site is yet another example of the  
15 collusive behavior between the NRC and the utility it is supposed to regulate.  
16 During the webinar the NRC praised the changes the utility has made at the nuclear  
17 waste site, instead of addressing why the safety violations occurred in the first place  
18 or why the NRC failed to address the pattern of violations occurring at the site.  
19 Neither NRC officials who spoke at the meeting, were a part of the original team of  
20 NRC officials who observed the misalignment incident that occurred at the San  
21 Diego nuclear site.

22           56. The public comment portion of the webinar was severely limited, and  
23 many of the questions Plaintiff submitted had remained unasked before an NRC  
24 official abruptly ended the public comment portion. The NRC official in charge of  
25 this portion was Michael Bloodgood. Several of the questions submitted by Plaintiff  
26 that remained unasked include:

27 ///

28 ///

1 (1) Why did the NRC let SCE use a practice spent fuel cannister that  
 2 was materially smaller (making it much easier to load) than the ones  
 3 actually used? Why was staff not trained on the actual differences  
 4 between the different sized cannisters?

5 (2) Why did the NRC let SCE load spent fuel in pin supported shim  
 6 cannisters that the NRC had not approved?

7 (3) Why is the NRC not requiring SCE to develop a “ready  
 8 retrievability” capability for damaged spent fuel in loaded cannisters?

9 (4) Why did the NRC allow SCE to not report the 3 August 2018  
 10 event for six weeks after the report was due, and only took action after  
 11 a whistle blower disclosed the event?

12 (5) Why has the NRC not conducted a single public spent fuel  
 13 proceedings in San Diego?

14 (6) Why have NRC officials chosen to physically interact with the San  
 15 Diego public through meetings controlled by SCE, the utility the NRC  
 16 is supposed to regulate? Especially, in light of the past problems at  
 17 these meetings with regulatory capture and censorship of the public,  
 18 which has suppressed free discussion.

### 19 **STANDARD OF JUDICIAL REVIEW IN FOIA CASES**

20 57. FOIA provides a statutory basis for citizens to request documents from  
 21 the federal governments and its various departments, agencies and/or officers. *See*  
 22 *generally* 5 U.S.C. § 552 *et seq.* The overriding purpose of FOIA is to “mandate  
 23 policy of broad disclosure of government documents” and maximum feasible public  
 24 access to government information. *Powell v. U.S. Dept. of Justice*, 569 F. Supp.  
 25 1192, 1197 (N.D. Cal. 1983) (citing *Church of Scientology v. United States Dep’t of*  
 26 *the Army*, 611 F.2d 738 741–42 (9th Cir. 1979)).

27 58. The U.S. Supreme Court has long recognized that Congress’ intent in  
 28 enacting FOIA was to implement “a general philosophy of full agency disclosure.”  
*United States Dep’t of Justice v. Reports Comm. for Freedom of the Press*, 489 U.S.  
 749, 754 (1989). The Supreme Court has explained that, without question, the Act  
 is broadly conceived. It seeks to permit access to official information long-shielded  
 unnecessarily from public view and attempts to create a judicially enforceable  
 public right to secure such information from possibly unwilling official hands. *EPA*  
*v. Mink*, 410 U.S. 73, 80 (1973).

59. The Supreme Court has also stated that FOIA is designed to “pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.” *Dep’t of the Air Force v. Rose*, 425 U.S. 352, 361 (1976). The basic purpose of FOIA “is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

60. A district court’s review of a government agency’s decision to withhold documents requested under FOIA is *de novo*, and the burden is on the agency to justify its actions of nondisclosure. *See* 5 U.S.C. § 552(a)(4)(B); *Kreindler v. Department of Navy*, 363 F.Supp 611, 613 (D.C.N.Y. 1973). In FOIA cases, the government bears the burden of establishing that any exemption from disclosure applies. 5 U.S.C. § 552(a)(4)(B); *Ortiz v. U.S. Dep’t of Health and Human Services*, 70 F.3d 729, 732 (2nd Cir. 1995), *certiorari denied* 517 U.S. 1136 (1996). Courts must construe FOIA’s statutory exemptions narrowly and in favor of disclosure. *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989).

#### **A. Plaintiff’s Freedom of Information Act (FOIA) Requests**

61. On 19 March 2019, Plaintiff requested the following:

“all records of communications from 29 November 2018 to present between any agent, officer or employee of [the utility operating the San Diego nuclear site] and any agent, officer or employee of the NRC regarding the subject matter of the March 25, 2019 meeting: the NRC’s “enforcement decisions regarding the Special Inspections conducted by the NRC to evaluate an August 3, 2018 incident involving a loaded spent fuel storage canister that was misaligned and became stuck on a metal flange while being lowered into a storage vault.”

The NRC assigned this request as NRC-2019-000239.

62. Plaintiff also requested expedited processing because the meeting was scheduled for March 25th and the records are critical to understanding the August 3rd incident, as well as the on-going safety violations occurring at the San Diego nuclear waste site. The public has a right to be kept abreast of the actions the NRC



1 has taken to regulate the nuclear site, and these records could have been made  
2 easily available to the public on the NRC's web page created for Category 3  
3 meetings such as the March 25th webinar. Plaintiff also requested expedited  
4 processing because it was urgent for the public to obtain the records in advance of  
5 the short-noticed March 25th webinar to meaningfully participate in the webinar  
6 and adequately address the on-going safety violations occurring at the site.

7 63. Defendant denied Plaintiff's request on the purported basis there was  
8 no "imminent threat" to life or safety of others, and Plaintiff was not a person who  
9 "primarily engaged in the dissemination of information to the public." The NRC  
10 stated to prove he was a person who primarily engaged in the dissemination of  
11 information Plaintiff was required to show a list of written and published articles.  
12 Although objecting to the NRC's purported excuses, Plaintiff e-mailed the NRC the  
13 same day with four recent publications Plaintiff either wrote or participated. All of  
14 the articles show Plaintiff was requesting the information because he is primarily  
15 engaged in disseminating information to the public about utilities and the agencies  
16 charged with regulating utilities. Further, as a certified fraud examiner and former  
17 political official, Plaintiff has dedicated a majority of his career to ensuring  
18 government agencies operate openly and transparently. Plaintiff also explained he  
19 had written many other articles that could be provided if necessary.

20 64. Faced with a satisfactory response to the NRC's inquiry as to  
21 Plaintiff's written articles, it presented a newly created roadblock and summarily  
22 stated it would log his response as an appeal for expedited processing (NRC-2019-  
23 000241), but there was no way to provide the records to the public in time for the  
24 March 25th webinar.

25 65. To date, the NRC has failed to provide any of the records identified in  
26 Plaintiff's request.

27 ///

28 ///

**B. Public Interest in Disclosure of Documents Requested Under FOIA**

66. The information requested under FOIA would inform the public about the NRC violations of public trust involving the threat to public health and safety and the general welfare of over eight million people living in and around the nuclear waste stored at the San Diego beach site. There is an obvious public interest in a full and thorough airing of serious abuses that did in fact occur at the San Diego nuclear waste site, in the hope that such abuses will not occur in the future.

67. The information sought will show the extent to which the NRC has colluded with the utilities it is supposed to regulate to prevent the disclosure of on-going safety violations and whether the NRC failed to take the necessary steps to enforce safety regulations at the San Diego nuclear site. It will shine light on whether the NRC's actions are failing to protect public health, safety, and welfare.

**C. Exhaustion of Administrative Remedy is Futile**

68. The NRC summarily denied Plaintiff's request for expedited processing. Although the NRC has lodged Plaintiff's objections as an "appeal [from] the denial of expedited processing and challenging the Commercial fee category," the NRC has demonstrated no clear intention to produce the records of communication between the NRC and the utility it purports to regulate.

69. The NRC's actions illustrate it is in collusion with the utility operating the San Diego nuclear waste site. During the 9 August 2018 CEP meeting, the NRC willingly allowed utility officials to repeatedly misrepresent the facts to the public relating to the seriousness of the misalignment incident that took place at the nuclear site. The NRC then allowed the utility to delay formal reporting for another six weeks after the meeting. This collusive effort to cover up the safety violations occurring at the San Diego nuclear waste site evidence the NRC has been captured by the utility it is supposed to regulate; therefore, any exhaustion of administrative remedies would be futile.

///



1           70. Moreover, Plaintiff has made several FOIA requests to the NRC over  
2 the last three months; however, the NRC has failed to produce a single record.  
3 Instead, the NRC merely lodges Plaintiff's objections as "appeals" in what seems a  
4 agency-instituted means to prolong the process and delay production, while the  
5 NRC never really intends to grant the request in the first place. The NRC provides  
6 mere lip-service to the laws under FOIA, but its actions demonstrate no intention of  
7 actually producing the records Plaintiff has requested.

8           71. The NRC has only exposed itself to the public through vehicles created  
9 by the utility it is supposed to regulate: the Community Engagement Panel.  
10 However, the duties of the NRC are not as mere participants, but as regulators who  
11 should hold independent meetings to inform the public of the NRC's enforcement  
12 actions to ensure the storage of nuclear waste in San Diego is done transparently  
13 and safely. The NRC has acted as a mere appendage to the utility it is charged with  
14 regulating. This collusive behavior and evasive tactics to avoid producing the  
15 requested records demonstrate the NRC's lack of intention to produce the records.

16           72. Therefore, based on the NRC's history of failing to produce records,  
17 summary denials, and dilatory tactics, Plaintiff has exhausted all administrative  
18 remedies under 5 U.S.C. § 552(a)(6)(A)(ii).

19           73. Further, any other exhaustion of administrative remedies would be  
20 inadequate and futile. Time is of the essence because the millions of people living  
21 in the cities and counties surrounding the site must be aware of the relationship  
22 between NRC and the utilities it is supposed to regulate. The NRC has already  
23 identified on-going safety violations at the San Diego nuclear waste site but has  
24 failed to produce the necessary records for the public to understand exactly what  
25 happened. The failure to produce records is just another example of what appears to  
26 be a collusive effort between the NRC and the utility it purports to regulate, and  
27 suggests a cover-up of safety failure issues.

28       ///

1           74. Without these key records, those operating the waste site may resume  
2 downloading the canisters without correcting the problems already created and  
3 identified in the NRC proceedings.

4                           **FIRST CAUSE OF ACTION**

5                           **DECLARATORY JUDGMENT**

6           75. The allegations made in the paragraphs above are fully alleged here by  
7 reference.

8           76. FOIA instructs the federal government, including the NRC, to publicly  
9 release the requested records.

10          77. The NRC has not provided the requested records to Plaintiff.

11          78. Plaintiff seeks declaratory judgment that the NRC produce Plaintiff's  
12 requested records immediately pursuant to FOIA.

13                           **SECOND CAUSE OF ACTION**

14                           **VIOLATION OF FOIA**

15          79. The allegations made in the paragraphs above are fully alleged here by  
16 reference.

17          80. Plaintiff seeks that the NRC release the requested records.

18          81. Plaintiff has exhausted its administrative remedies and has received  
19 none of the records requested.

20          82. FOIA instructs the federal government, including the NRC, to publicly  
21 release the requested records.

22          83. Upon substantially prevailing, Plaintiff should be awarded his  
23 attorneys' fees under 5 U.S.C. § 552(a)(4)(E).

24                           **PRAYER FOR RELIEF**

25          WHEREFORE, Plaintiff respectfully prays that:

26          1. The Court declare that the NRC's failure to respond to Plaintiff's  
27 requested documents was unlawful;

28          ///

1           2.     The Court order the NRC to make Plaintiff's requested records  
2 released to Plaintiff;

3           3.     The Court order the NRC to award attorney's fees to Plaintiff pursuant  
4 to 5 U.S.C. § 552(a)(4)(E); and

5           4.     The Court grant such other and further relief as this Court may deem  
6 just and proper.

7                               Respectfully submitted,

8                               AGUIRRE & SEVERSON, LLP

9  
10       Dated: March 29, 2019

11                               /s/Maria C. Severson  
12                               Maria C. Severson, Esq.,  
13                               Attorney for Plaintiff  
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JS 44 (Rev. 06/17)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

MICHAEL J. AGUIRRE

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Maria C. Severson, Esq., SBN 173967

AGUIRRE & SEVERSON, LLP (619) 876-5364  
501 West Broadway, Suite 1050, San Diego, CA 92101

**DEFENDANTS**UNITED STATES NUCLEAR REGULATORY COMMISSION, and  
DOES 1 to 10, inclusive

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**'19CV0587 H KSC****II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable Sat TV <input type="checkbox"/> 850 Securities Commodities Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/ Disabilities - Employment <input type="checkbox"/> 446 Amer. w/ Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

5 U.S.C. Sec. 552

Brief description of cause:

Action under FOIA to compel production under FOIA requests to the NRC

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

03/29/2019

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE